



IN THE
SUPREME COURT OF THE UNITED STATES

October, 1982

No. 82-1914

EVELYN FALKOWSKI,

Petitioner

v.

BERTRAM N. PERRY,

Respondent

and

LOWELL W. PERRY, etc. *et al.*,
(Equal Employment Opportunity Commission),

Respondent

REPLY TO OPPOSITION OR WAIVER
OF OPPOSITION FROM COUNSEL FOR
BERTRAM PERRY IN PERRY V. GOLUB

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QUESTIONS PRESENTED FOR REVIEW

1. Where failure of government to hear or insure initial legal defense to supervisor sued as an agency official contributed to her subordinate's prevailing, should resulting final judgment be vacated?
2. Should decisions tainted by unresolved conflicts of interest of counsel be vacated?
3. Do certain representations to Courts constitute fraud upon the Courts such that these Opinions ought to be vacated?
4. Does appellate nullification without publication, of falsely stigmatizing published decisions, deprive of due process?
5. Where District Court fee decisions find on the merits of untried cases, and record shows bias, should this Court vacate affirmance and order remand for decisions by an impartial tribunal?

(1)

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REPLY

Statement that there is "nothing in the petition for certiorari or supporting brief addressing our entitlement to attorneys' fees in such case" (Case No. 81-7278, Bertram Perry v. Alvin Golub, et al.) is refuted by the petition itself as follows:

REFUTATION IN PETITION

The Petition asserts:

(1) that the District Court departed from the law of the case in a published decision by assessing fees against EEOC to Bertram Perry as a whistle blower against his supervisor, Petitioner Falkowski. That the Eleventh Circuit published only "affirmed in part," without clarifying that the District Court lacked record, trial on the merits, or jurisdiction on which to base such findings and fees (pp. 2, 3).

(2) The petition, p. 4, points out that Bertram Perry received free legal defense from a lawyer renowned (App. A, 68a) and

known as a critic of EEOC "fishing expeditions" who defends employers charged before the Office where Perry works.

(3) The petition, pp. 6,7 urges that the fee opinions violate due process and law pertaining to moot cases.

(4) At p. 15 the petition cites fee Opinion (25 EPD 131,488) as "here appealed"

(5) At p. 24 it points out the impact of vacated decisions. Heading 10 on that page is "Appeal of Fee Opinions:" P. 26 points out that the published decisions find on the merits of untried issues.

(6) The petition at p. 29 points out that "Mr. Gardner's interest was not in his client's loyalty, deserved or not, to his supervisor. Counsel for Perry was discrediting Petitioner to undermine her credibility in other cases where he represented employers against EEOC. For example, pp 30, 31 of the Petition cite Wood v. Georgia, 370 U.S. 375 (1981) as support for vacating

the Opinions because of conflicts of interest of Counsel which should have been appropriately addressed by the District Court.

(8) P.32 mentions existence of evidence that screams against the findings in the fee awards. On that page is raised questions of Fraud upon the Courts which pertain to the fee award to Mr. Gardner; Moore's Federal Practice 7, pps. 507-513 is cited.

(9) P.39 urges lack of basis for the substantial award by the District Court to Bertram Perry's attorney, and contrasts this with lack of credible support for the Court's reiterating, after mootness decisions his 1975 finding "there was a suggestion that Petitioner might be slanting cases for the benefit of certain private attorneys who were her personal friends."

(10) P. 40 relates that the transcript of hearing on fees shows the Court asked Perry's lawyer to prepare a decision but that request to this lawyer on Petitioner's behalf for

any proposed decision was not answered. Page 41 relates to the foregoing, in discussion of Fraud Upon the Court.

(11) P. 47 asks that affirmance be vacated and fee decisions be remanded for decisions by an impartial tribunal.

(12) P. 51 asks this Court, pursuant to Rule 17 (a) to exercise its power of supervision because of departures from the accepted and usual course of judicial proceedings, and concludes:

"At a minimum, she asks this Court to vacate and:

(1) remand for fee Opinions by an impartial tribunal, and

(2) cause published clarification that these cases were administratively resolved, and that all questions concerning Petitioner's character and competence referred to by the Perry v. Golub Court have been withdrawn by EEOC, and that Bertram Perry voluntarily withdrew two lawsuits against

Petitioner."

SUPPLEMENT TO PETITION

Petitioner asked for the foregoing as a minimum. Reversal and remand for trial is justified under Klaprott v. United States, 335 U. S. 601 (1949), Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944), and Rodgers v. United States Steel Corp., 508 F. 2d 152, 163, cert. denied, 423 U.S. 832 (1975) which holds that Courts are not exempt from Constitutional strictures.

Bertram Perry sought out a powerful law firm and a Title VII defendant lawyer known as a critic of EEOC. He presented a fraudulent case, the possibility of which actually became manifest quickly. But "mootness" decisions blocked Falkowski's proof. Praise to Perry as a black man, in the face of grave questions, was sheep's clothing, and also reinforced his improper behavior.

Under the standards of Pickering v. Board of Education, 391 U. S. 563 (1968) Bertram Perry could not have prevailed against EEOC. The record shows malicious, false, and obscene remarks by him to and about his supervisor, and not violation of his rights.

Further, this Court's decision in Bush v. Lucas, No. 81-469 (June 13, 1983), is reason for reversal of the judgment below. Perry's award for fees through May 3, 1976 was for claims this Court decided should be resolved by the Civil Service Commission.

Respectrully submitted,

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